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Ethical Justifications of Social Europe

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ABSTRACT

Is a European Social union desirable? And is it feasible? Many politicians are skeptic about this issue. In this paper we turn to normative political philosophy in order to dismiss this skepticism. We show that arguments in favor of the implementation of egalitarian social justice at a national scale can be expanded to supranational institutions like the EU. Also, we argue that, ultimately, justice should be cosmopolitan. Theories of cosmopolitan justice already set an agenda for Europe. Moreover, the EU could develop its own legitimacy by convincing its citizens of the importance of the public goods it provides. Feasibility constraints play an important role in the reflection on how social justice should be implemented at the European level. Although there are clear advantages in organizing forms of interindividual redistribution within the EU, we suggest that, for the following years, Europe should rather focus on the expansion of social investment in the enhancement of the basic capabilities of the poorest European citizens.

CONTENTS

Euroforum.....	2
<i>Abstract</i>	3
Contents	4
1. Introduction.....	5
2. Strong skeptic arguments.....	5
3. Rawlsian justice	7
4. Cosmopolitanism and humanitarianism.....	11
5. Relational theories of justice	12
6. From statism to cosmopolitanism	14
7. The public good argument.....	16
8. Solidarity.....	17
9. Basic income or social investment.....	19

1. INTRODUCTION

Many politicians are skeptic about the desirability and feasibility of a European Social Union (ESU). The aim of this paper is to see whether we can find strong enough counterarguments to dismiss this skepticism. First, we will turn to the specifically ethical discussion about this issue. It is surprising that normative political philosophers did not pay more attention to the question of what justice could mean for supranational organizations like the European Union. Probably this is a consequence of the fact that this discipline is dominated by Anglo-Saxon philosophers who tend to be euro-skeptical. We think that three strategies can be followed in order to prove the necessity of the development of a ESU. (1) One can show that arguments in favor of the implementation of (more) just institutions on a national scale can be expanded to supranational levels like the EU. (2) One can show that theories of cosmopolitan justice apply all the more at the European level. (3) Moreover we will argue that the EU already provides an important range of public goods to its citizens and that it could expand this offer considerably by developing a social union. Also, feasibility constraints play an important role in the reflection on how social justice should be implemented at the European level. Although there are clear advantages in organizing forms of interindividual redistribution within the EU, we suggest that, for the following years, Europe should rather focus on the expansion of social investment in the enhancement of the basic capabilities of the poorest European citizens.

2. STRONG SKEPTIC ARGUMENTS

European and national policy makers are often rather negative about the development of a genuine European Social Union. Many of them favor a more egalitarian distribution of wealth and income within the European Union, but it is considered to be improbable that national states will ever transfer social competences to supra-national institutions. Three types of arguments for this position have been given in recent years.

First of all, skeptics have argued that, historically, the basic rationale behind the European construction has been quite different. Indeed, the founding fathers of the EU had primarily a political and an economic aim. After two world wars visionary politicians wanted to establish a lasting peace in Europe. However, instead of engaging directly into a political union, they have started up various forms of economic cooperation, hoping that economic success would force politicians to agree on common political institutions. At the background, there was the idea of 'le doux commerce', that dates back from the eighteenth century. Montesquieu and the early proponents of economic liberalism thought that war is destructive for all participants, including for the winners. Hence it is better, and mutually advantageous, to engage in trade relations. This idea had been declared obsolete in the first half of the twentieth century by theorists stating that capitalism inevitably leads to imperialist wars, but the founders of the European Community for Coal and Steel have resumed the more optimistic stance. More than half a century later, we see that European leaders have repeated the same strategy time and again: they engage into economic reforms and they bet that the necessary institutional reforms will be agreed upon subsequently. With the introduction of a common currency for example, they have created 'un fait accompli', knowing that the sustainability of the euro depends on the development of new and far reaching forms of coordination of national economic policies. And indeed, until a few years ago, it was hardly imaginable that the budgets of the

member states of the Eurozone would be closely monitored by the European Commission, as is now the case. However, the primary goal of the EU hitherto has been economic growth as a means for peace-building rather than social progress.

Secondly, there is the evident problem concerning the democratic legitimacy of institutional reforms that are primarily imposed by economic necessities. Here, the spectre of an irresistible European technocracy lurks behind the corner. For a long time the subsidiarity principle has been considered to be the corner stone of the European construction. What can be done efficiently at a lower level should not be taken over by higher levels of decision making. Policies decided within smaller communities suit the preferences of the citizens better and it is easier to organize a public debate on their shape. However, when the European Commission and its administration control member states, especially those belonging to the Euro zone, in order to avoid excessive budget deficits or unbalanced external trade relations, this is a highly centralized procedure. Probably these external controls help to impose some discipline to national politicians who are inclined to overspend or who are too much myopic, and in this way they contribute to the general interest of national societies. Questions arise however about how far and how deep these central controls can go. The definition of a minimal pension age, labor market policies, the generosity of the allocation of social security benefits, the performance of the education system: all this has definitely an influence on budget deficits. Is this a sufficient justification for Europe to aim at a harmonization of policies in all these spheres? One of the strong arguments in favor of a European Social Union is precisely that this is an indispensable precondition for the preservation of the economic and monetary union². The problem is that such a policy orientation would probably enhance the (perception of a) 'democratic deficit' within Europe.

A third objection against the implementation of something like a European Social Union states that it would disturb the generally accepted division of labor between national and European levels of decision making. The idea is that Europe's primary function is to boost economic growth by expanding and deepening the common market. National authorities can then decide to tax away part of this additional wealth and spend the money for poverty relief or for redistribution. Hence the European Union provides the economic 'infrastructure' for a more generous social policy at the national level without having to develop a social policy at its own level. Not just political leaders, but also trade unions and associations of employers agree that social policy is and has to remain a national competence. This is the reason why even trade union leaders object against the imposition by European instances of (nationally defined) standards of minimum income or minimum wage. Another example: even a modest project granting some European subsidies to NGO's distributing food to the poorest – substituting for the allocation of food surpluses to food banks – has recently been rejected unanimously by all European prime ministers.

I think that these are the strongest objections against the development of a ESU. Their nature is rather political ('realpolitik') than ethical. However, they prevent us from developing wild utopias.

² Frank Vandenbroucke, Europe: The Social Challenge – Defining the Union's social objective is a necessity rather than a luxury, Opinion Paper Observatoire social européen, N° 11, July 2012.

Proposals for a ESU should definitely take into account these counterarguments. 'Ought implies can' is an important rule in ethics although pragmatic considerations should not be used to completely stifle institutional imagination. These skeptic considerations are however not the final word on the issue of the European Social Union. For a long time national states have derived their legitimacy from their ability to shield off their citizens from the most disruptive fluctuations of the market. Globalization has not just created more wealth, but also new risks and it has undermined the capacity of states to protect their citizens. One could have expected Europe to take over this function and to fulfill it in a more efficient way, but this is certainly not the perception of what really has happened. Organizing the expansion of the common market, Europe has been seen as part of the problem, rather than as its solution. The debates on social dumping illustrate this point. Giving substantial content to the European Social Union could remedy the failure of national states to efficiently regulate international markets and to organize the protection of its most vulnerable members. European institutions have partly moved in this direction for instance with the implementation of anti-discriminatory policies and the development of regional funds. Moreover, as the reference to the horrors of past wars inevitably loses its force in the course of time, what Europe needs in order to mobilize popular support, energy and imagination is a future-oriented project, the sense of a common purpose. Beyond debates on incremental changes there is a need for a more fundamental normative discussion on the goals of the EU. Hence the urgency of a reflection on what values like solidarity and justice could mean for Europe.

3. RAWLSIAN JUSTICE

An extensive literature on theories of justice has been developed since Rawls' seminal work on this issue³. Rawls aims at elaborating a normative theory of justice that can be endorsed by people sharing a democratic and broadly egalitarian ethos. He thinks society consists of a variety of social positions. Each social position defines a set of rights and obligations. Together, all these social positions define the basic structure of society. Its fundamental features are supposed to be organized at the constitutional level and this is precisely the focus of Rawls' work. Unavoidably, some of these social positions yield more privileges than others. This makes the definition of these social positions and of the basic structure of a society a very delicate matter. Now Rawls offers a contractualist method in order to determine what social justice basically means. A just social order is one that rational and reasonable citizens would choose under more or less ideal circumstances. This means: we should avoid that people's conception of justice would be biased by their personal interests. Therefore, they should develop their ideas on social justice from a more or less detached point of view. This is what Rawls calls the original position. He invites all citizens to develop the principles that should govern a just society behind a veil of ignorance. Everybody should put between brackets his actual position in society. People should imagine that they possibly could be amongst the worst off members of society as well as amongst the more privileged ones.

³ John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, 1971.

Rawls presumes that rational and reasonable citizens would be prudent enough to make the situation of the worst off as good as possible. Hence he thinks that they would agree with his famous three principles of justice. First of all, people should be allotted the most extensive set of equal civil rights (translating human rights). Moreover, inequality of wealth and income is only permitted (1) if all positions in society are open to all its members on conditions of fair equality of opportunity (for equal competence) and (2) if this inequality is maximally advantageous to the worst off members of society (the difference principle). This last principle is justified because in a society with equal civil rights and equal opportunities the most attractive social positions will still be occupied by those who are favored by accidental factors: the genetic lottery, the family in which they are born, the absence of serious forms of brute bad luck... In a just society one should compensate for these factors that are beyond individual responsibility. However, Rawls' theory of justice is egalitarian, but not naïve. He accepts that individual effort should be rewarded. His theory is responsibility-sensitive. Also he takes seriously the leveling down objection: it is not good to condemn everybody to poverty in order to achieve equality. The ultimate objective of a just society is that the situation of the worst off is (maximally) improved. If equality kills the motivation to work, then we risk to divide evenly poverty instead of wealth. Hence some inequality can be justified by considerations of economic efficiency.

According to Rawls, justice is the first virtue of social institutions. This statement is not as innocent as it may seem. It drastically restricts the scope of the theory of justice. It means that claims of justice do not impose themselves on individual motivations, nor do they arise within families or beyond the borders of a particular state. Rawls distrusts theories of global justice. He thinks that they are a kind of ideological coverage hiding the interests of global capitalism, keen to make profit on a worldwide basis⁴. He is convinced that, even in a globalized world, the fate of individuals is still mainly determined by their place in the national division of labor. This relates to Rawls' cooperativism. Rawls describes society as a cooperative venture for mutual advantage. Cooperation and division of labor yield gains in productivity, and hence a cooperative surplus. The problem of distributive justice crops up when these economic agents have to divide up the proceeds of their cooperation. When some participants to the production process feel that they are exploited, they will raise a claim of justice. Rawls believes that the networks within which social wealth is produced, what we have called the 'basic structure', are mainly national. David Miller has defended a similar position: as people tend to compare their own situation especially with the situation of co-citizens, claims of justice and redistributive endeavors are mainly restricted to the realm of national states⁵. Rules of justice regulate the appropriation of the wealth created within a particular society. Of course, this is a highly controversial matter, loaded with conflict.

Towards the end of his life Rawls has explained his theory of international justice in a small booklet on *The Law of Peoples*⁶. Again he uses the device of an original position. However the participants to the (hypothetical) debate on international justice are not individual human beings, but

⁴ John Rawls & Philippe Van Parijs, *Three Letters on the Law of peoples and the European Union*, in *Autour de Rawls*, Special Issue of *Revue de Philosophie Economique*, Vol. 8, 2003, p. 7-20.

⁵ David Miller, *Principles of Social Justice*, Harvard University Press, Cambridge Mass. 1999, p. 18.

⁶ John Rawls, *The Law of Peoples*, Cambridge, Mass., Harvard University Press, 1999.

representatives of the various political states in the world. Again, during the deliberation about a just world order, they should forget about the size of the population and the relative strength of the people they represent, the extent of its natural resources and the level of its development. According to Rawls, liberal and decent peoples would not aim at distributive justice – that is an internal matter of separate states – but rather at a peaceful world order. Hence they would agree on the ordinary principles of international law: respect for national sovereignty, compliance to international treaties and agreements, non-intervention in other states, war can only be justified in case of external aggression, *ius in bello*, etc. The only originality of Rawls' principles is that he accepts the possibility of humanitarian interventions in other states in case of permanent and severe violations of human rights. Also Rawls accepts a duty of assistance to extremely poor countries, but only for the sake of the preservation of peace, i.e. only up to the point where these countries become able to sustain decently just institutions.

Rawls' refusal to aim at distributive justice on a global scale has been heavily contested by other political philosophers and ethicists. Also, many disciples of Rawls were disappointed by Rawls' severe restriction of the scope of the theory of justice. Thomas Pogge and Charles Beitz for example have argued that globalization has made the fate of people and communities all over the world dependent on regulations on trade, finance and quality standards, defined by international institutions that are heavily dominated by the interests of wealthy people and nations⁷. The expansion of the world market has rendered obsolete the idea that the basic structure would still be predominantly national. Arguably this is even more the case with the European Union. The jobs and expectations of so many people in Europe depend on decisions of the European Central Bank, the European Court of Justice, the European Commission and the Council of ministers. Moreover, free trade reigns within Europe and it are mainly European institutions that regulate competition, that prevent the creation of monopolies and oligopolies, that control banks and other financial institutions. Hence Rawls' principles of justice should apply not only to the internal affairs of separate states, but also to the whole of the European Union. This means: a policy stimulating economic growth by liberating the markets of goods, services, capital and labor can only be justified if it contributes maximally to the improvement of the situation of those who are worst off within Europe. If, according to Pogge and Beitz, Rawls' principles of justice, and especially the difference principle, should apply to the whole world, then definitely, we can say that they should also apply to the European Union.

But what would this mean exactly? Concerning Rawls' first principle, one can argue that the respect for fundamental human rights has already been secured on a much firmer basis than under the old exclusively national legal systems by the creation of the European Court of Justice and of other legal institutions with transnational competence. European citizens who think that they have been treated unjustly by national courts of justice or who complain about discriminatory policies can appeal to European institutions to claim their rights. Also, Europe has created a large territory where

⁷ Thomas Pogge, *World Poverty and Human Rights - Cosmopolitan Responsibilities and Reforms*, Polity Press, Cambridge, 2002.

Charles Beitz, *Political Theory and International Relations*, 2nd ed. , Princeton University Press, 1999.

free movement of persons and of employees prevails (under certain conditions). Equality or opportunities or equal access to attractive positions for equally competent persons – Rawls' second principle - has been enhanced by the Erasmus exchange program of students and teachers, and by the creation of transnational procedures for recognition of university degrees and competences obtained in another country. However much work still remains to be done in order to create real and not just formal equality of opportunities, also on a national scale. Now, when we try to see what the implementation of the difference principle on a European scale could mean, we meet an important dilemma. If we consider the European Union as a single economic and political unit, then the difference principle applies to individual persons. Hence an extensive program of interindividual redistribution on a European scale should be set up. In the long run, this could possibly lead to the creation of a European social security system. If, on the contrary, following Rawls' suggestion in *The Law of Peoples*, we aim at international justice, also within the EU, and if we want to reserve a substantial domain of competences for national states, then we should take states as the basic units for redistribution within Europe.

The difference between both strategies is far from being negligible. Suppose we want to develop a European policy concerning (the risk of) unemployment. In the first case we should aim at the pooling of individual risks within a system that should be funded by the contributions of all European citizens. In the second case solidarity is better organized between states, for instance with a Fund aiming at the economic development of 'workpoor' regions. One has argued that people are more prone to solidarity with other individuals than with collective entities. Therefore, we could presume that the first type of solidarity would be more robust than the second one. Indeed, insurance systems are based on more or less enlightened self-interest. Hence, like in the case of national systems of social security, there is a good chance that, after a while, a European system of unemployment insurance would acquire some form of legitimacy. The practical implication of interindividual redistribution between employed and unemployed persons would be that net transfers of wealth from rich to poor regions would take place. However, interregional redistribution would not be the primary aim of such a Social Europe. Transfers would quasi automatically result from a system that runs according to its own logic. The second strategy to build up a European Social Union on the contrary would depend on national transfers of wealth from rich to poor regions. This should be based on political decisions at the European level. Knowing what actually happens within Europe, these decisions would be very hard to achieve and would always be contested. Probably, each year again, some countries would try to renegotiate the transfers. In the end, following Mrs. Thatcher's device – 'We want our money back' - each country would try to get back what it gives, and no serious redistribution would take place.

To be honest, the first strategy would be (almost) as vulnerable as the second one. Organizing an insurance system covering the risk of unemployment at the European level would be especially attractive if the risk of unemployment were equally divided amongst individuals, regions and states. However, in actual reality, this is far from being the case. Some persons, especially high-skilled people, are convinced (rightly or wrongly) that they will never have to face a problem of unemployment. Others are chronically at risk of losing their job. Also, in some regions, unemployment is endemic, whereas in others, during long periods of time, there is no more than frictional unemployment. In these circumstances, it will be as difficult to establish interindividual

forms of redistribution as to set up intergovernmental Funds. Both will be threatened by free ridership. We will come back to this discussion in the final paragraph of this text.

4. COSMOPOLITANISM AND HUMANITARIANISM

In Rawls' conception justice is primarily an internal matter of separate peoples⁸, united by common institutions, common sympathies and a moral conception of what a just society means. His ideas about the world order are much less ambitious: it should permit a great variety of societies to co-exist peacefully under some minimal conditions. If international solidarity is needed, it can only impose itself between societies. This is a somewhat strange position for a liberal political philosopher, because we expect liberals to advocate ethical individualism, i. e. the idea that we should always focus on the ethical consequences of social structures and institutions on the fate of individuals. Rawls' theory of domestic justice conforms to this device, but not his theory of international justice (and he refuses a theory of global justice). Now, against Rawls, many political philosophers have developed a cosmopolitan theory of justice⁹. According to this type of theory, what we owe to the global poor is defined by the principle of mutual help: we are morally obliged to help people in severe distress, if we can do so with relatively few costs and risks for ourselves. This is also the core principle of humanitarianism. It is not a minor obligation. On the contrary, it is a strong and urgent duty we have towards all human beings, on the basis of our common humanity, no matter their color, ethnic background or culture. The precise content of this duty differs however according to whether we give a minimal or a more expanded definition of the most basic human needs and rights.

Martha Nussbaum is the most well-known advocate of cosmopolitanism¹⁰. She argues that each and every human being - stronger even, each and every living being – has an unconditional right to develop his or her basic capabilities. For human beings, she proposes an extensive list of ten basic capabilities. These range from the right to bodily integrity and the right not to be hungry to the right to form one's own conception of the good and the right to full participation to social life. I will not discuss this theory in detail. What is important for us here is, first of all, that Martha Nussbaum presents her list as an absolute deontological constraint on all societies and institutions, and second, that she presents these requirements as claims of justice. In the literature this has been called a non-relational theory of justice. Human persons have claims of justice on the very basis of their humanity, no matter in what relations they stand towards other human persons.

For Nussbaum, the duties implied by her Capability Approach are quite substantial and they impose themselves without the slightest possibility of compromise or tradeoff. There is no hierarchy

⁸ Rawls speaks about 'peoples' rather than 'states' to indicate that he adheres to a normative rather than a realist conception of international relations.

⁹ For instance Onora O'Neill, *Faces of Hunger – An Essay on Poverty, Justice and Development*, Allen & Unwin, 1986 and Henry Shue, *Basic Rights – Subsistence, Affluence, and US Foreign Policy*, University of Princeton Press, 1980.

¹⁰ Martha Nussbaum, *Frontiers of Justice*, Harvard University Press, Cambridge, 2006.

amongst the basic capabilities she enlists and she gives no indication of priorities. For instance, in order to permit persons with wheelchairs to have access to schools, public administration, trains and busses, probably huge costs should be made. These expenditures would probably not pass the utilitarian requirement that the utility of the whole of society should be maximized, but Nussbaum justifies them on the basis of her capability theory. Her list of basic capabilities goes well beyond a minimal agenda of human dignity as for instance defined in the Millennium Goals for Human Development in poor countries. It rather constitutes a normative framework that can be used as a standard for the evaluation of European institutions. One can argue however that the lack of hierarchy amongst the basic capabilities diminishes the practical usefulness of her theory and even that Nussbaum neglects the basic fact of scarcity¹¹.

Humanitarian or non-relational theories of justice define purely moral rights and duties that impose themselves on all human societies. Societies can respond in very different ways to the requirements imposed by Nussbaum's list, but of course, we need procedures and institutions in order to create so called perfect rights, rights with corresponding holders of obligations. Hence, although Nussbaum's theory of justice is no more than a substantial version of humanitarianism, it certainly imposes on European institutions an encompassing agenda in the field of poverty reduction, education and employment policy. Guaranteeing basic capabilities for all European citizens, even if this policy is justified on humanitarian grounds, is not at all a minimalistic endeavor.

5. RELATIONAL THEORIES OF JUSTICE

Are we first of all human beings, members of a global 'kosmopolis', or are we rather culturally embedded citizens of particular societies? Both positions have been defended by contemporary philosophers. With her Capability Approach, Nussbaum argues for a universal theory of the good life that should be sufficiently general and even vague to permit – at least in principle - a great diversity of human societies to gain legitimacy. Others argue for cosmopolitanism on the basis that what human beings have in common is much more important than what divides them. They sometimes refer to biological features or to the genetic endowment human beings share. Adherents to the phenomenological philosophical tradition on the contrary stress that we are not freewheeling spirits, floating above the turmoil, but that we are bodily beings, always situated on a particular place, against a horizon that we can never completely leave behind. Hence the requirement of absolute detachment from our spontaneous commitments would be impossible and even not desirable. We learn to develop empathic feelings towards distant others on the basis of our interactions with the near and dear and against a background that we can never completely objectify in a transparent way.

¹¹ Amartya Sen has developed his theory of basic capabilities within a consequentialist framework that does admit tradeoffs. Sen refuses to establish a priori a list of basic capabilities. He thinks that each society should define its own priorities in a democratic political process. Compared to Nussbaum's version of the capability approach, his theory loses some of its normative sharpness – politics takes priority over ethics - but it is able to take into account the fact that not all things that are desirable or ethically required can be realized immediately. See Amartya Sen, *Development as Freedom*, Knopf, New York, 1999.

Relational theories of justice are based on the idea of human persons as contextual beings and oppose themselves against abstract humanitarianism. They derive claims of justice from the particular relations people sustain with each other. We have to help the victims of a tsunami or a tornado because they are human persons like us, people in extreme distress. This is a strong humanitarian requirement. However, if it can be shown that these natural disasters are caused by the global warming, for which the inhabitants of the rich parts of the world have special responsibility, then we have an additional obligation to help, that is now based on a claim of justice in the strong sense of the word. Claims of justice based on relational theories of justice have to be justified in a public debate. They are discussed on the political forum, while humanitarian duties seem to have more of a moral status, preceding public debates.

According to the relational conception, claims of justice can be founded on various types of social relations. As I have already explained, Rawls' cooperativism sees the question of distributive justice to arise among people who cooperate in order to create a cooperative surplus that has subsequently to be divided up amongst the contributors. A disturbing aspect of Rawls' cooperativism is that this theory seems to neglect those who for some well- or ill-founded reason are unable to cooperate for the production of a social surplus. I do not mean here people who are temporarily sick or those who got an accident during their active career, but rather people who are permanently disabled, or others who live in the margins of society or in the outskirts of Europe, and who are hardly integrated in the market economy. Doubtlessly, those people are amongst the most vulnerable citizens, but if one takes cooperativism literally, they have no claim of justice. Non-relational theories of justice do not have to face this kind of problems. Rawls himself acknowledges the problem. He seems to plead for an ad hoc solution, granting rights to severely disabled persons in a kind of second round, at the legislative stage, rather than at the constitutional level. Probably, a better way to escape to this problem is to appeal to another type of special relations yielding claims of justice. Maybe these nonproductive people do not contribute to the general welfare, but, as members of our society, they share with us a common history, they are subject to the same institutions, they sometimes speak the same language(s), and in general, they and us, we belong to the same community of fate. Belonging to the same community is definitely a special relation yielding particular claims of justice, next to the humanitarian rights all human beings already have on the basis of our common humanity. Again, the relevant community should not necessarily coincide with a nation state or a group sharing the same language. There already is a huge diversity within our contemporary (nation) states. Probably, cultural and linguistic heterogeneity within Europe is of the same order as within multinational states. Still there is also an important communality.

Similarly one can argue that there exists a special relation between some European countries and their former colonies. In most cases, this common history encompasses the best and the worst: exploitation, oppression and cultural destruction, but also medical progress and education. The consequence is that, in case of serious problems, former colonizers feel responsible and people in former colonies look for assistance from the people with whom they share part of their history.

Thomas Pogge has developed his own version of relational justice¹². He argues that there is a causal relation between the wealth in the Northern part of the world (or in the West) and poverty in the South: poor people are poor because they have been exploited by rich people at the other side of the globe. Underdevelopment in some countries would mainly be caused by external, rather than by internal factors. According to Pogge, the rules of the international monetary and financial systems and the trade regulations on the world market systematically benefit the rich part of the world. Hence again, a duty for the latter to compensate for the harm caused to the poor parts of the world. The strength of these relational claims of justice evidently depends on the plausibility of this actual connection between wealth and poverty on a world scale. Loose social relations generate weaker claims of justice. If a country is brought to severe distress, due to a foolish internal policy conducted by its own president or government, we may still feel a humanitarian duty to help but there will be no strong duty of justice, although it could well be the case that wealthy countries have tolerated these greedy or even predatory leaders for some time. The relative strength of the causal nexus between internal and external structures and institutions, of between poverty here and wealth at another place in the world becomes important in this respect. It is easy to see the implications of Pogge's theory for the European Union. If inequality within the EU is larger than within the US, this is partly due to the fact that Europe has recently accepted poor countries like Rumania and Bulgaria as new members of the Union. This situation creates obligations for the future, but one cannot argue for a strong duty of justice towards poor Rumania and Bulgaria on the basis of past harm. It can however be a legitimate question whether the common agricultural policy within the EU has not contributed to the impoverishment of small farmers. If this is a case, they can legitimately raise a claim of justice.

6. FROM STATISM TO COSMOPOLITANISM

The idea that justice is primarily a national concern and that there are no bounds of justice beyond national borders has not only been defended by John Rawls, but also, and on other grounds, by Thomas Nagel¹³. He advocates another version of a relational theory of justice, that we will call statism. According to this philosopher, people cannot live together peacefully without some coercive rules. Now, for a liberal, all coercion should be justified towards those who have to undergo it. In a liberal society citizens are forced to comply with laws. These can only be legitimate if they have been made (collectively) by the same citizens to which they apply. In a scheme inspired by Rousseau, citizens are the subjects as well as the authors of the general will. The element of coercion is balanced by the need for justification of the coercive laws. Of course, people can escape to legal coercion by emigration, but in that case, the price they have to pay for their freedom is so high that we can still speak of coercion. Nagel thinks that it only makes sense to speak about justice in the context of a national state. He sees no sovereign power equivalent to a national state on a transnational level. Hence, norms of social justice do not apply on a transnational level such as the European Union, and certainly not at the global level.

¹² Thoams Pogge, op. cit.

¹³ Thomas Nagel, The Problem of Global Justice, in *Philosophy and Public Affairs* 33, 2005, p. 113-47.

This conclusion is highly contestable. Definitely, Europe does exercise coercion on the European citizens, for instance recently by imposing budget cuts on national states in order to save the Euro. Also there is a European Parliament, where representatives of the European citizens discuss the appropriateness and the legitimacy of the European policies and procedures. Entrance in the European Union may be voluntary, members are not allowed to quit unilaterally in case of disagreement. If they did, we may suppose that some sanctions on behalf of the other members of the EU would follow. The price to pay would probably be quite high. Against Nagel, Andrea Sangiovanni argues that norms of social justice also apply to voluntary organizations¹⁴. The fact that, at the time of their entrance, new member states agree in general terms with existing European laws and treaties does not mean that they are not allowed anymore to criticize in the name of social justice some of the European policies.

I think Sangiovanni is right in this, but it does not matter so much for our discussion here. National states within the EU do not have full sovereignty anymore. In classical political theory, sovereignty was a yes-or-no question, not a matter of degree. Within Europe, it may still be the case that national states have the power to decide in exceptional circumstances (the Carl Schmitt criterion), but in many realms European law now has priority on national law. Also within federal states like Belgium there is no clear hierarchy between state and substate law. Sovereignty is divided among many instances. The dual role of members of communities, who are at the same time submitted to coercion and who can ask for its justification, is not anymore the monopoly of national states. Hence Nagel's theory offers no principled objection against a European Social Union aiming at social justice.

Philippe Van Parijs has argued that also at the global level, there are coercive rules and there is a nascent public opinion, organized by NGO's and asking for the justification of international trade regulations or of the barriers against migration of poor people to more wealthy countries¹⁵. Hence, both Nagel's criteria apply and – contrary to his own thesis - it does make sense to aim at global justice. According to Van Parijs, there is a horizon where relational and non-relational theories of justice meet. Actually the world is so much united by globalization that almost all human beings have been submitted to the same rules of the world market and of some regulatory institutions. Of course, a special relation with almost all human beings is not so special anymore. The fact that, ultimately, all human beings – except perhaps a tiny minority - depend on the same institutions can be defined as a special relation, but probably, the bounds of justice this situation yields are weaker than the claims based on dependence on national or European institutions.

Philippe Van Parijs' plea for a basic income refers to this point where relational and non-relational theories of justice, cosmopolitanism and theories of global interdependence, meet. Ultimately, we are all human beings and we should aim at global justice. Each and every human being, by the very fact that he is born, has a right to his share of the natural resources of the earth, a right to his part of

¹⁴ Andrea Sangiovanni, *Solidarity in the European Union: Problems and Prospects*, in Dickson, J. Eleftheriadis, P. (eds.), *Philosophical Foundations of European Union Law*, Oxford University Press, 2012.

¹⁵ Philippe Van Parijs, *International Distributive justice*, in R.E. Goodin, P. Pettit, T. Pogge, *The Blackwell Companion to Political Philosophy*, Oxford, Blackwell, Vol. II, p. 638-52.

the inherited wealth, accumulated through history and more generally, a right to compensation for the appropriation of scarce attractive social resources and positions by a restricted group of people¹⁶. However, Van Parijs accepts this as a long term goal. We should not aim at a general tabula rasa of all actual states and social institutions, but we should rather expand the existing patterns of redistribution and solidarity. The implementation of a Eurodividend, as a supplement to national systems of social security, should be seen as a first step towards a global basic income. Probably for a very long time the global basic income would be much lower than the Eurodividend and national systems of social security would still be more generous, but the general direction of what we should aim at is clear.

7. THE PUBLIC GOOD ARGUMENT

Nussbaum's cosmopolitanism justifies a strong agenda for a social policy at the European level, but is not very specific – it applies equally to the whole world - and it gives no indication of where European policy makers should start. Rawls' and Nagel's arguments for the implementation of social justice at a national level are not so destructive for the possibility of something like a European Social Union as both philosophers seem to think themselves. Still we lack a strong positive argument in favor of the definition of social justice as the common purpose of the European Union. Maybe the public good argument could be a plausible candidate for this task. The idea is that the European Union provides all of its members with a range of public goods. We have already hinted at some of these goods like internal peace-keeping and additional economic growth. Also the European Union can have more influence on the international scene than in case national states would act separately. How to stop global warming? How to tackle global environmental problems? How to stop the importation of meat treated with hormones or antibiotics without being sued for international courts of justice for violation of the principles of free trade? How to regulate international financial markets? Can we organize a Tobin Tax? In all these fields transferring national competences to the European level is more efficient.

Some advantages of the European union are quite obvious. Although the euro at a certain moment has been in great danger, we can hardly imagine having to return to a situation where we have to exchange money when we travel to Paris or Amsterdam. Queuing at border controls within Europe already seems to belong to a distant past, although we sometimes wish that gangsters could be stopped at the borders of our country. Other advantages are less visible. The creation of a wide unified economic territory permits a more efficient taxation of income from capital. The imposition of European norms of good governance on governments stimulates national politicians to better serve the general interest of their country. Europe makes it easier to organize counter powers against monopolistic tendencies of some multinationals. Europe can promote some beneficial social models: states combining high levels of productivity and economic growth with high levels of taxation and solidarity perform better than states with low levels of economic growth and taxation

¹⁶ Philippe Van Parijs, *Real Freedom for All, What (if anything) Can Justify Capitalism?* Oxford University Press, 1995.

and a poor organization of social security. Some public goods Europe provides implicitly have a social impact. The question is whether the public goods argument can also justify a more explicit development of a ESU.

The problem with public goods is however that they are always vulnerable to free ridership: member states wanting to profit maximally from common provisions without fair contribution. There is a huge literature on how to limit free ridership. Organizing more transparency about the advantages of European membership is certainly important. It should be made clear that Europe can enhance the domestic problem solving capacity, for instance by pooling the risk of being subjected to asymmetric external shocks. From an ethical perspective the fairness principle is important in this respect. We know that, in common life, most people are willing to cooperate for a common purpose, at least when they know that most others will join them in this effort. The idea is that each beneficiary should equally participate in a common venture. At the background is the idea of reciprocity, which is the most basic social norm in common life. Those who want to profit from cooperation should also contribute to it. This form of cooperative justice is close to the Rawlsian cooperativism we have described above, but while Rawls stresses the claims of justice that each participant can derive from his cooperative effort, here the emphasis lies on the duty of all beneficiaries of the cooperation to contribute in a fair manner.

Empirical research learns that the fairness principle constitutes a powerful motivation for individuals to avoid free ridership and to engage in loyal cooperation. It is less obvious that it works equally well in intergovernmental negotiations in the Council of ministers. Now, The main reason why the provision of public goods within Europe in general, and the development of a ESU in particular, is so difficult seems to be the lack of a common ethos amongst European citizens and politicians. Solidarity is the key value in this respect. Definitely, we have found good ethical arguments in favor of a ESU. However the lack of solidarity within Europe is supposed to seriously hamper the feasibility of this kind of reform.

8. SOLIDARITY

Solidarity can be defined as the willingness to share with others we do not know personally, but with whom we identify on the basis of some form of communality. Solidarity defines a we-feeling. It is a transposition of the third value of the French revolution – fraternity - to the era of masses, to the realm of anonymous social relations. It refers to the idea that we are all children of the same father and hence, it presupposes a sense of equality. Solidarity amongst wage laborers is the classical example. Here the communality is formed by the fact that workers or employees occupy the same structural position within a capitalist society. At the most abstract level we can develop empathic feelings with all fellow human beings. However, in actual reality, solidarity seems to flourish better on the basis of more particularistic features. Also ascriptive features like race, religion, common language or nationality seem to work better as criteria of identification than common projects. Habermas' constitutional patriotism is fine, but probably, it defines a form of identity that is too abstract or too much intellectualist to mobilize European citizens.

Doubtlessly, solidarity can be instrumental in limiting the temptation of free ridership. The important question is whether it is indispensable for the construction of some form of ESU. Communitarian and liberal political philosophers have different opinions about this issue. The latter think that spontaneous feelings of solidarity have no normative weight and that, if they have not been the subject of thorough reflection, they can even be dangerous in some contexts¹⁷, while the former are convinced that ultimately, ethical motivations have no other basis than the common understandings and intuitions of actual people with their particular attachments¹⁸. Ultimately, this is not just a matter of general principles. Two strategies have been defended for Europe. Many opinion leaders are convinced that we need a strong common identity in order to advance in the direction of a ESU. Also they point at the evidence that heterogeneous societies tend to have less generous systems of social security: no serious redistribution without a strong we-feeling. Hence, they are convinced that Europe will never be able to develop into more than a free trade zone. Others think that it is not impossible that the creation of new or expanded redistributive mechanisms at the European level would generate its own cultural presuppositions, i.e. the ethos that is needed to sustain these institutions. Still this remains a wager. Also, it is not clear whether the introduction of more democracy in Europe would stimulate the development of a ESU, or whether it would rather sharpen nationalist sensibilities. Probably some institutional engineering can be helpful in this respect, for instance with the organization of the election of European MP's by a Europe wide constituency. However, the question how far a common ethos can be produced by institutional reforms is not really decided. Probably it is even not decidable because too much context dependent.

It is clear that, in actual reality, the sense of a European identity is less developed than feelings of national adherence. However, pluralism and multiculturalism have also become the common reality within our so-called national states. In this situation Europessimism could easily yield a more general pessimism on the future of redistributive welfare states. Now, despite all pluralism, surveys clearly show that most Europeans, at least in the old European countries, do share some common values: precisely these values backing our welfare states. We are convinced that the existence of strong welfare states is what distinguish us from the US and most of us are proud on that. If Europe wants to develop a common purpose, definitely, it has to develop into a social union, not as a competitor with existing national welfare states, but rather in order to strengthen distributive justice. In this respect what we do together is probably more important than all references to common values, heritage and history. Hence again, the importance of the creation of public goods.

¹⁷ See Brian Barry's discussion of Michael Walzer's *Spheres of Justice* in *Columbia Law Review*, April 1984, Vol. 84 (3), p. 806-815.

¹⁸ Michael Walzer, *Spheres of Justice – A Defence of Pluralism and Equality*, Oxford, Blackwell, 1983, p. 9 and passim.

9. BASIC INCOME OR SOCIAL INVESTMENT

As we already have mentioned, the European Union already produces an important range of public goods. However the public good argument stays relatively general as long as we do not specify how it can justify a European Social Union. Here we have to turn back to the analysis of the actual political problems of the EU that we have sketched in the beginning of this text. One of the main arguments in favor of a European Social Union is that it is necessary in order to obtain a more smoothly functioning economic and monetary union. In this respect, several authors have suggested that Europe should look at how the United States has succeeded in solving the problem of maintaining a monetary union between states with varying economic development¹⁹. There are two remarkable differences. First of all, in the US, there is large interstate migration. When the car industry in Detroit closes down, many people move out to another, more flourishing state. Within Europe on the contrary, linguistic barriers considerably limit migration between member states. Moreover, here, migration is seen as a threat to national welfare states. There is a second inbuilt stabilizer of the social and economic system of the United States. Federal authorities have organized and funded a system of interpersonal redistribution. Social security in the US may be less generous than in our European welfare states, transfers from wealthy to poor states, organized via systems of interpersonal redistribution, are considerable, if we compare them with what we have in the European Union. Also migration is less a threat if social security programs are organized at a central level. Centralization of insurance devices is more efficient. In this case the subsidiarity principle does not lead to decentralization.

The American example shows that Europe could gain in terms of economic stability and political legitimacy by organizing a Social Union. However, there are many obstacles. We have already mentioned the reluctance of governments and social actors to engage into this direction. Stimulating the development of a systematic anti-poverty and employment policy in the various European countries by way of the open coordination method may be too soft, but it has some merits: it shows clearly where policies fail and that it contributes to spread good practices. The introduction of a European minimum wage, although different in each country, would be a modest step in the good direction. Currently it is on the European agenda, but it will be hard to get it approved by the various member states.

Note that many problems of the EU stem from the recent expansion of the Union. The conditions for admission to the Union were much tougher for the first countries that wanted to join, than for their successors. Originally the idea was that a country could only enter into the Union, on condition that it had gone through a series of structural reforms. Countries had to successfully modernize their economy before being admitted. Entrance in the Union opened the prospect of strong local economic growth and progress. Hence migration pressure remained limited. Recently however,

¹⁹ Bea Cantillon and Frank Vandenbroucke (eds.), *Reconciling Work and Poverty Reduction. How successful are European welfare states?*, Oxford, Oxford University Press, 2014.
Philippe Van Parijs, *The Problem of Inequality Today. A quasi-American Strategy for European Egalitarians?*, in *Disparità Economiche e Sociali: Cause, Conseguenze e rimedi*, Milano, Giuffr   editore, 2012, pp. 11-18.

countries have been admitted for political reasons more than on the basis of their economic record. I am not sure that the development of a EU with variable geometry can solve this kind of problems. Doubtlessly, it would be easier (but also less generous and less urgent from an ethical point of view) to construct a social union with countries that have already a comparable level of economic development.

Now, if we want more transfers between the European member states, should we organize this on an interpersonal or on an international basis? As we have already mentioned, there are some clear arguments in favor of interpersonal redistribution. It is perceived as more legitimate than interstate transfers that have to be decided on a yearly basis by politicians bargaining in order 'to get their money back'. Also, interpersonal systems of redistribution on the basis of insurance mechanisms or the organization of a Eurodividend, Philippe Van Parijs' proposal, would make quite visible the advantages of membership of the EU. I tend to favor an alternative and less spectacular proposal, namely the increase of European investments enhancing the capabilities of poor people. My inspiration comes from the theory of economic development. Here you find the following classical problem: What should a poor country do in case it gets a windfall profit, a huge amount of money falling from heaven? The opening of a diamond mine in the desert of Botswana is an often quoted example²⁰. The bad way to proceed is to spend the money for consumption, to subsidize bread or oil, or to give additional income to part or all of its citizens. Sound policy on the contrary is to use the money for investment.

To some extent, this is what Europe has done in the recent past with regional and structural Funds. The amounts of money spent are not huge – the European budget is limited – but nevertheless, transfers to countries like Bulgaria and Rumania represent 3 to 4 % of their GDP. Also, most public investments in poor European member states are currently funded by the EU. Many of these investments concern the construction of roads, opening distant regions to markets. Improving market access is appropriate in a project that focuses on stimulating economic growth and direct or indirect job creation. However new Funds could be created for more direct forms of social investment focusing on the improvement of education systems, health care and access to labor markets. This could be a project that is not overly ambitious, but also not unfeasible.

²⁰ World Development Report 2001, *Attacking Poverty*, World Bank Washington.